

The Viability Of A National Retrenchment Scheme (NRS) In Malaysia

by

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Suggestions were made by the Malaysian Trade Unions Congress (MTUC) and the government for the establishment of a National Retrenchment Scheme (NRS), for the purpose of providing retrenchment benefits to workers, who are retrenched from employment. Under this proposed scheme, the employee and employer are to contribute a certain sum of money into the Fund. The establishment of a NRS is often debated when the country is affected by a major economic crisis, which results in an increase in retrenchment cases. For example, following the September 11 attacks on the World Trade Centre in New York, Malaysia was economically affected, which resulted in an increase in retrenchment cases. It was reported in the mass media that the employers were urged to accept the NRS proposal, and to contribute 50 cents per month for each worker.¹

The establishment of the Fund would no doubt add a financial burden on employers as they currently pay towards EPF and SOCSO, and some even have to pay towards the Human Resources Development Fund (HRDF), insurance for their foreign workers and medical benefits, amongst others. Therefore, to compel employers to contribute into another fund will add to their costs. Further, not every company retrenches their workers and therefore it would not be fair to expect all companies to contribute towards the said Fund.

On 14 April 1999, the Malaysian Employers Federation (MEF), the Malayan Agricultural Producers Association (MAPA), the Federation of Malaysian Manufacturers (FMM) and the Malaysian International Chamber of Commerce and Industry (MICCI), on behalf of the employers, presented a joint memorandum on the proposed establishment of a retrenchment fund to the then Minister of Human Resources, YB Dato' Dr Lim Ah Lek. The objective of the memorandum was to state to the government the reasons why the employers were opposed to the idea of having a retrenchment fund. The reasons were as follows:

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- (a) The proposed Fund seeks to shift the responsibilities from one employer to another employer. This is not acceptable as it would penalise innocent, efficient and/or law abiding employers who would have to assist and pay the retrenched workers of recalcitrant employers or badly managed companies. The Fund will also defeat the paramount objective of the Employment (Termination and Lay-off Benefits) Regulations 1980 namely, the mandatory payment of termination benefits upon the termination of the services of employees, by their employers. Such a fund may be viewed and/or assumed as a “Bail-out-Fund” which may potentially encourage non-compliance by the employers with the relevant legislations and regulations.²
- (b) Employers have their respective responsibilities and obligations to shoulder, particularly during the period of economic downturn. Therefore, they cannot unilaterally pass on such responsibilities and obligations to other employers due to the cost factor. Further, employers are already burdened by labour statutes that protect the interests and well-being of the workers, for example, the Employees Provident Fund Act 1991, the Employees’ Social Security Act 1969, and the Workmen’s Compensation Act 1952, among others. The current economic problems have resulted in companies examining their expenditure and resorting to cost cutting measures, where appropriate. As a result, operating costs have been trimmed and companies have emerged viable and better placed to continue in today’s highly competitive global market.³
- (c) Labour costs in Malaysia had increased dramatically during the period when the economy of the country was booming, namely, prior to July 1997. However, the labour costs had not been reduced despite the current economic slowdown. At a time when the country is striving to enhance investment opportunities and to gain investor confidence, the suggested Fund may have a negative effect on foreign as well as local investors, and may drive them to other countries that offer better returns for investments.⁴
- (d) The relevant statistics show that out of the 7.5 million workforce, only 51,648 workers were retrenched between January and August 1998, ie only 0.68%. The rate of retrenchment at 0.68% therefore, is not a justifiable reason for the establishment of a Retrenchment Fund. Employers, particularly in the plantation sector, rarely retrench their workers either during good times or bad times due to certain peculiarities. In fact, the plantation sector needs approximately

60,000 workers and the manufacturing and other sectors need approximately 45,000 workers. Therefore, retrenched workers would be able to find alternative employment with the least difficulty, if they are not too selective on the nature of the job. The Minister of Human Resources and Manpower was quoted as saying that some 80% of the retrenched workers had already found alternative employment.⁵

- (e) Further to the above, the Minister confirmed recently that 82% of the employers involved in the retrenchment exercise, had paid retrenchment benefits estimated at RM56.7 million. A number of employers had even paid benefits which were higher than that provided for under the law. Only about RM12.7 million were still owing to the workers, that is approximately 18%. This rate is not alarming and does not justify the setting up of a Retrenchment Fund. The Employers' Associations were of the view that more effective and efficient enforcement by the relevant authorities would probably further reduce this percentage.⁶
- (f) The proposed establishment of the Fund would inadvertently move the country towards the creation of a social security net, which is something that should be avoided. The proposed Fund will be the first of its kind in an ASEAN country. The ILO has carried out a survey in various countries and has come to the conclusion that such funds exist, mainly in European countries, such as Austria, Belgium, Spain and the United Kingdom. In some countries, the funding of such a scheme is by the state. The experience of the countries that have such a fund is that it is very costly to finance and it encourages employees not to seek alternative employment, subsequent to retrenchment, and it ultimately makes the investment conditions in the country less competitive.⁷ Some, even thought that the proposed NRS was a form of unemployment insurance or had been something akin to the unemployment benefits which are available to the unemployed in the West.⁸
- (g) The Employers' Associations further contended that a prevailing economic downturn would deplete the Fund within a short period due to the high number of retrenchments.⁹

The Employers' Federation went on further to contribute their views to the alternatives the government could resort to in protecting the interests of the retrenched workers. The FMM suggested that;

- (a) The government should address the weaknesses in current legislation to accord priority for the payment of retrenchment benefits, over secured debts and statutory payments.
- (b) The government could encourage greater economic activities, to ensure the continuous creation of employment opportunities, so that the retrenched workers could find new employment easily and speedily. Getting new employment, it was argued, is more critical than setting up a retrenchment fund.
- (c) If the government still feels that there is a need to establish a scheme for the retrenched workers, another alternative approach could be undertaken through the establishment of another withdrawal scheme under the Employees Provident Fund ie the Withdrawal Scheme for the Retrenched Workers.

The MEF has also suggested that s. 292(1) of the Companies Act 1965 be amended instead, to meet most aspects of the contingency intended to be covered by the proposed fund. The said section could be suitably amended to provide that all unpaid wages and other dues payable to an employee, including retrenchment benefits, shall have priority over claims of any secured creditor in the event of the insolvency of the employer.

With the above challenges and opposition from the employers, the proposed retrenchment fund is currently in abeyance. Despite this, the MTUC is still persistent on establishing the NRS. In relation to the setting up of the NRS, the writers would like to share the views of *Al-Marhum* Professor Harun Hashim who was a former judge of the Supreme Court and the former Dean of the Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), whose views had been sought on the subject when he was serving as the Dean of AIKOL. *Al-Marhum* Professor Harun Hashim had suggested that every individual on attaining the age of 18, should register with SOCSO by paying a minimal fee. The person should be given a reference number or possibly a card. He would not pay anything yet as he is not yet employed and he could continue to pursue his studies. Then, when the time came for him to engage in employment, he would not be employed unless he had registered with SOCSO. He will have to produce his SOCSO card first and

having done so, his SOCSO account will be activated. This will also apply to those who are self-employed, regardless of whether they are employed in a five-man company or a backyard industry.

Al-Marhum Professor Harun Hashim further added that SOCSO is a good scheme and should therefore cover the entire working population. When a person is injured, he will need medical care, and when he is hospitalised, he should only need to produce his SOCSO card. Rather than burdening the government in paying for medical expenses, the funding would come from SOCSO, and this inevitably would enable the general public to obtain better medical facilities. It must be noted that in the hospital there are two groups of people, firstly, the worker patients, otherwise known as the working class, and secondly, the young and senior citizens. However, the majority of patients are generally the working class.

Similarly, when a person is retrenched, the retrenchment benefits should be paid out by SOCSO on a weekly basis, for a reasonable period of time, perhaps for a maximum period of 12 weeks which is a reasonable period for a person to seek alternative employment. If the person has obtained alternative employment within the aforesaid period, the payments will automatically cease. This is like a safety net. There are cases where for example, an employer cannot afford to pay his workers when they are retrenched because the factory has been destroyed by fire. Through this arrangement, the workers can still receive some form of payment. *Al-Marhum* Professor Harun Hashim was of the opinion that the Employment (Termination and Lay-Off Benefits) Regulations is an illusion, a disappearing oasis, mainly because it does not cater to all situations, including when the employer does not pay his retrenched workers.

With reference to MEF's contention that errant employers might abuse the scheme, for example by freely dismissing its workers, knowing that this scheme is available, *Al-Marhum* Professor Harun Hashim was of the view that such errant employers should be prosecuted in court and if such an employee invokes dismissal under s. 20(1) of the Industrial Relations Act 1967, he should be awarded a higher amount of compensation, if he succeeds in his claim. Generally, workers will not be satisfied with a small sum like the payments from SOCSO. *Al-Marhum* Professor Harun Hashim therefore suggested that the contribution to SOCSO be extended to three wings from the present two wings, namely, (a) Employment Injury Scheme, (b) Invalidity Pension Scheme and (c) Retrenched Employee Scheme. The contributions to item (c) above, could commence when the economy of the country is stable. He was also of the view that the EPF

fund should not be used to cater for retrenchment, as the main purpose of the fund was to take care of a person during old age. Therefore, SOCSO should be the social security net for the working class, during their working years.

In relation to the contention against the Fund ie that there will be a shifting of responsibilities from one employer to the other, which the Employers' Federation considered as penalising innocent and law abiding employers, the writers humbly submit that that said view is inaccurate. Employers and employees will contribute towards the Fund. If there is a retrenchment, the Fund will take care of all the retrenched employees who have not been compensated by their employers. For those employers who have chosen not to retrench, it does not mean that they are being penalised and that they too have to retrench in order to derive some gain from it. It must be understood that when legislation on a retrenchment fund is promulgated, it will also specify the ground rules and procedures of retrenchment which an employer has to follow. If the employer proceeds to retrench workers without just cause or excuse, appropriate action may be taken against them, including legal action.

Meanwhile, those who really have a genuine need to retrench, will be assisted by the Fund whilst those who choose not to retrench will still benefit as firstly, they can afford not to retrench and they will garner popularity amongst their workers for being good employers and be respected by their employees, who in turn will remain loyal to the company and thereby increase its productivity. Further, if a good employer faces difficulty in the future, which is something that could happen, for example, if his entire premise is wiped out in a fire, the Fund will come in handy. So, in the long run, he does not lose anything. A trade unionist once said that employers must not make the mistake of being penny-wise and pound-foolish, by not wanting to contribute a mere 50 cents per worker, towards the formation of the NRS. By ensuring that there is a social security safety net to protect the nation's workforce, employers would indirectly be protecting their businesses in times of economic uncertainty.¹⁰ Therefore, there will not be any loss, if all employers contribute to the Fund jointly with the employees.

Further, the Employers' Federation perceived that the Employment (Termination and Lay-Off Benefits) Regulations 1980 was sufficient for the protection of the workers, and that introducing a Fund would defeat the paramount objective of the Regulations. It must however be noted, that the Regulations only govern employees whose wages are RM2,500 and below, manual workers and those categories of employees mentioned in

the First Schedule of the Employment Act. What about the rest of the employees? The writers humbly submit that the Fund will not defeat the paramount objective of the Regulations, because it will also cause amendments to the Regulation in relation to retrenchment compensation, when guidelines are drawn up on how payments from the Fund are to be carried out.

In relation to the contention that the Fund will further burden the employers as they would have to contribute to it alongside other social security legislation, the writers are of the view that this contention is again inaccurate. This is because to reap the benefits of good labour, the management has to be generous in creating a happy and pleasant atmosphere at the workplace. By providing such benefits, the employer is not sustaining losses, and to a certain extent is also benefiting from it. At the end of the day, the employees are happy because they have a sense of security in employment and if a mishap occurs, there will also be protection for the employers.

As to the establishment of the Fund during an economic slump, the writers are in agreement with the Employers' Federation, that the payment towards the Fund should be executed when the economy starts picking up and should continue when the economy is booming. Further, the statistics produced by the Employers' Union show that only 0.68% of the total workforce in Malaysia were retrenched, i.e. only 51,648 workers were retrenched from January to August, 1998 and from this number only 18% (9,296 workers) were not paid retrenchment benefits amounting to RM12.7 million. They maintain that this rate is not alarming enough to justify the setting up of a retrenchment fund. It is not the number of workers or the period in which the retrenchment took place that surprises the writers, but rather it is the employer's stance in dismissing this as a small, negligible number. A figure of 9,296 unpaid workers is a substantial figure. It is an issue of security of tenure in employment which is akin to a "property right" and there are over 9,000 workers who were not been paid the benefits when they were retrenched. This in itself is, in the view of the writers, an alarming figure which must be looked into seriously by the authorities.

On the misconception that the NRS might become an unemployment benefit system, as it has in some developed countries, the writers are of the opinion that this is not the purpose of the NRS at all. The retrenched workers would claim from the self-generated proposed fund by virtue of

being contributors and not with a begging bowl.¹¹ Under the scheme proposed by the MTUC, retrenched workers will first have to register with the “Employment Exchange” and will only begin receiving an allowance if they cannot find employment or a job cannot be allocated to them by the “Employment Exchange” within a period of three months. A similar set up was also suggested by *Al-Marhum* Professor Harun Hashim in which the retrenched employee would only be paid for a maximum of 12 weeks on a weekly basis, after which he would be expected to have already found a job. If he has found a job before the expiry of the 12 weeks, the retrenchment payments will cease.

In relation to the mechanism of the NRS, the MTUC and those in favour of a scheme would like the Fund to work on a tripartite basis along the lines of the UK’s National Insurance Fund (NIF), where the contributions to the Fund are made by the employee, employer and where the rest is complemented by general taxation. Further, it is envisaged that the scheme should be managed by a third wing of SOCSO. Under the current SOCSO scheme, the employer must make a monthly contribution for each eligible employee, according to the rates specified by the government. The employees’ share of 0.5% of wages should be paid for coverage under the Invalidity Pension Scheme, while the employer pays 1.75% for the Employment Injury Scheme and the Invalidity Pension Scheme. The rate of contribution is based on the monthly wage of the employee in accordance with 24 categories. Contributions should be made from the first month the employee is employed. Unlike the six different types of benefits offered by the NIF, SOCSO only offers the two benefits mentioned above. The Employment Injury Insurance Scheme provides an employee with protection for accidents that occur in the course of his work, and the Invalidity Pension Scheme provides 24 hours coverage to an employee against invalidity or death, due to any cause not connected with his employment.

For SOCSO to manage the national retrenchment funds, the contributions must be increased slightly, probably 0.1% more than what is currently being paid. After all, the argument is that a large number of employers and employees contribute to SOCSO, but not all employees sustain injury in the course of their work. But no one is complaining because it is the law which compels the contribution. Similarly, if employers are made to pay 0.1% extra, it will work on a similar principle. As it currently stands, SOCSO has a respectable balance even after having paid out all the benefits for the year.

One of the contentions of the Employers' Federation against the NRS, is that the funds would deplete within a short period, if the number of retrenchments were higher. For example, during the economic crisis in 1997, a total of RM12.7 million was not paid to the retrenched workers and according to them, SOCSO could not possibly handle this. It is submitted that SOCSO should be able to handle this without difficulty. Unless the employer has gone into liquidation, any amount paid out by SOCSO to the retrenched workers, will be recovered from the errant employer attempting to escape from liability, through the legal process. It is further suggested that priority should be given to SOCSO in relation to the proceeds from the sale of the company's assets, for the amount paid out by it, by way of retrenchment benefits.

With regard to the establishment of a retrenchment fund, aside from the Employers' Federation, many are in support of its establishment. With reference to the report where the retrenched workers of Nikko Electronics Bhd, who protested outside the Penang state assembly seeking the state government's assistance to get their benefits and compensation, Syed Shahir Syed Mohamud, the former *President of the Malaysian Trade Unions Congress*, stated: "if there was a National Retrenchment Scheme in place, as proposed by the MTUC in 1998, they could have resorted to this scheme to get some compensation. Malaysian laws need to be amended to ensure justice for all workers, especially for those who lose their jobs and their source of income."¹²

Commenting on the above, Datuk Zainal Rampak, the Secretary General of the Transport Workers Union who was also the former President of MTUC, stated that a national retrenchment fund can be established with a seed capital of about RM20 million consisting of contributions from both workers and employers. According to him, the money could easily be raised if the country's 10 million workers were to contribute RM1 each and employers matched it ringgit for ringgit. It was also reported that the Malaysian Employers Federation (MEF) is also supportive of the establishment of such a fund provided it is all-encompassing and does not burden the employers.¹³ The Government is also prepared to provide a retrenchment fund but needs to first devise a mechanism to sustain it.¹⁴

In conclusion, through this article, the writers have laid down the reasons why the Employers' Federation was not initially in favour of such a fund, reasoned out some of their contentions against it, and stated how the Fund would benefit them in the long run and serve as a protection to them in times of economic uncertainty. Further, some suggestions were formulated in relation to the mechanism of the National Retrenchment Scheme, with reference to the views of the prominent scholar, *Al-Marhum* Professor Harun Hashim, and some guidelines that could be taken and followed from the National Insurance Fund of the United Kingdom. What is being emphasised is that workers who are terminated from employment due to redundancy in an organisation, should not be made to suffer further by not being paid their retrenchment compensation provided by the 1980 Regulations and/or the collective agreement to which the affected worker was formally a member of.

Endnotes:

- 1 See, for example, New Straits Times, 26 January 2002.
- 2 Joint Memorandum on the proposed establishment of a Retrenchment Fund, 14 April 1999 by MEF, MAPA, FMM and MICCI.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 *Sunday Star*, 31 March 2002.
- 9 Ibid.
- 10 Ibid.
- 11 *Sunday Star*, 31 March 2002.
- 12 Syed Shahir Syed Mohamud, "National Retrenchment Fund sorely needed now" at <http://www.malaysiakini.com/letters/119433>. It was reported that the company had, in July 2008, abruptly retrenched its workers without notice.

- 13 See 'Malaysia: Retrenchment Fund Under Study' at <http://www.mysin Chew.com/node/20416>.
- 14 According to the Minister of Human Resources and Manpower, Datuk Seri Dr S. Subramaniam, the Government is prepared to provide a retrenchment fund, but needs to first devise a mechanism to sustain it. He stated that the Government was prepared to protect the needs of workers caught in situations where their employers were suddenly wound-up. However, the Ministry was also concerned about the long-term feasibility of the plan. See 'Government needs mechanism to sustain retrenchment fund', the Star Online, Wednesday October 12, 2011 at http://biz.thestar.com.my/news/story.asp?file=/2011/10/12/business/9677482&sec=business#13296349684061&if_height=400.
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